

Docket No. 42390P10779

Application Serial No. 09/822,603

REMARKS

Applicant respectfully requests consideration of the following remarks.

Rejections Under 35 U.S.C. § 102

In the July 1, 2005 office action, claims 1-12, 15-21 and 23-30 stand rejected under 35 U.S.C. 102(e) as being anticipated by Alexander et al. (6,177,931).

Independent Claims 1, 6, 12, 15, 18, 24 and 28

Regarding claim 1, the office action states “the claimed ‘providing access to television programming to enable a customer of a broker to create a custom channel...’ is met by Head end”, (office action, page 4, section 3). Applicant respectfully submits that Alexander fails to describe at least applicant’s further amended independent claim limitation of “a custom channel including at least one television program selected from the television programming; and transmitting from the broker to the customer the custom channel including the at least one television program, the custom channel created by the customer”, as required for a proper 102(e) rejection.

First, nowhere does Alexander describe that the head end “transmit[s] the custom channel created by the customer and including the at least one television program from the broker to the customer”, according to applicant’s amended independent claim 1. Applicant’s prior response enumerated Alexander’s complete and only references to ‘Head end’, in which Alexander only discloses the head end transmitting “preloaded messages (overlay message to an advertisement)”, (column 32, line 48). The described

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'preloaded messages' are not the claimed "the custom channel including the at least one television program".

The office action also lists numerous sections of Alexander, asserting that they teach 'transmitting a custom channel'; (col. 7, 10-30, lines 47-56; col. 9, line 65-col. 10, line 22; col. 10, lines 43-60; col. 20, line 60-col. 21, line 10), (office action, page 5, last two paragraphs). However, none of these referenced sections make any reference to 'transmitting'. Rather, they describe 'tuning', or 'tuning a television' to a channel. In normal usage, 'tuning' is associated with a receiving device, such as tuning a radio or tuning a television, and Alexander explicitly, consistently, and unambiguously describes 'tuning' as 'tuning a television', (col. 10, lines 2-7; col. 31, lines 2-3; col. 25, line 56; col. 30, line 63-64), not as 'transmitting', and 'transmitting' is not described in these sections. The description in Alexander does not define 'tuning' differently than presented here, so there is no basis for interpreting 'tuning' as 'transmitting' when 'tuning' is explicitly defined as "tun[ing] a television" in Alexander. Further, nowhere does Alexander describe the head end transmitting television programs, so Alexander does not describe applicant's recited "transmitting from the broker to the customer the custom channel including the at least one television program".

Secondly, the office action fails to accurately recite the language of applicant's claim when it equates viewing a program with receiving a program; "[i]f a viewer only watches CBS or ESPN channel, the view[er] receives only either CBS or ESPN"; (office action, page 3, section 1, paragraph 1). It should be noted that applicant's independent claim 1 does not recite 'receiving' a program; rather, the claim recites "transmitting . . . the custom channel including the at least one television program". In any case, receiving a

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program does not equate to "transmitting from the broker to the customer the custom channel including the at least one television program".

Alexander refers to 'tuning' the television to another channel (column 14, lines 64-67), a news channel (column 7, line 17), a favorite channel (column 16, lines 39-41), or tuning a television so that a broadcaster's channel is the first watched when the viewer first turns on the television, (column 24, lines 38-40). Thus, according to Alexander, as in the prior art, even if the user is not 'viewing' a channel, numerous channels (but not 'custom channels') are being simultaneously 'transmitted' by broadcasters. Thus, 'viewing', 'tuning', and 'transmitting' are clearly distinguished from one another. Applicant's amended independent claim 1 recites "transmitting the custom channel created by the customer and including the at least one television program from the broker to the customer", thus descriptions in Alexander and in the office action of 'viewing', 'tuning', and 'receiving' do not describe applicant's claimed "transmitting".

Thirdly, the office action states that Alexander teaches, "creating a custom channel, which includes listings of programs", then further states, "Alexander's head end or broadcaster receives various content from various content providers on the various networks and customizes channels to users", (office action, page 3, section 1, paragraph 1). Because of this, the office action deems applicant's arguments irrelevant.

However, although 'channels' are mentioned throughout Alexander, as shown earlier regarding 'other', 'favorite', 'news', and 'broadcaster's' channels, Alexander does not describe 'a custom channel', nor a 'custom channel created by the customer'. Alexander only describes customizing the EPG or 'grid guide' as a means for selecting programs that a viewer may want to watch from among numerous channels, such as CBS, ESPN,

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ABC, FOX, etc., which are already being transmitted to viewers by broadcasters irrespective of customization of the grid guide. Alexander provides no description of a custom channel create by a customer, nor of transmitting a custom channel.

It should be noted that applicant's claims recite a custom channel, but do not recite that the custom channel includes channel listings. Conversely, Alexander describes a listing of programs, but does not describe them as part of a custom channel. Rather, Alexander describes the channel listings as part of the Electronic Programming Guide (EPG), or more particularly, part of the 'grid guide' of the EPG. Alexander distinguishes 'a television program' from 'a listing of programs', and transmitting a channel listing which simply lists the names of programs is not equivalent to transmitting a "custom channel including the at least one television program, the custom channel created by the customer" recited in applicant's claims.

For at least the provided reasons, applicant respectfully submits that Alexander fails to describe "a custom channel including at least one television program selected from the television programming; and transmitting from the broker to the customer the custom channel including the at least one television program, the custom channel created by the customer" as recited in independent claim 1. Likewise, for the reasons provided, and at least the reason that Alexander fails to describe applicant's recited 'custom channel' as discussed above, Alexander also fails to teach at least the following amended independent claim recitations:

Claim 6: "...adding the at least one selected television program to a custom channel created by the customer; and transmitting the custom channel including the at least one selected television program from the broker to the customer."

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Claim 12: "...the custom channel data identifying selected television programming for at least one custom channel created by the customer; and transmitting to the customer the at least one custom channel including at least one television program selected from the television programming."

Claim 15: "...adding the at least one selected television program and the selected time to a custom channel, the customer channel created by a customer."

Claim 18: "...a custom channel including at least one television program selected from the television programming; and...the transmitter to transmit from the broker to the customer the custom channel created by the customer, the custom channel including the at least one television program."

Claim 24: "...a custom channel including at least one program selected from the television programming; and a controller to generate custom channel data for the custom channel created by the customer, the custom channel data identifying the at least one selected television program, and to send the custom channel data from the broker to the provider".

Claim 28: "a custom channel including at least one television program...and transmit from the broker to the customer the custom channel created by the customer and including the at least one television program selected from the television programming."

Therefore, applicant respectfully requests withdrawal of the U.S.C. 102(e) rejections from independent claims 1, 6, 12, 15, 18, 24, and 28.

Inasmuch as claims 2-5, 7-11, 16-17, 19-20, 23, 25-27, and 29-30 depend from and include all of the recitations of independent claims 1, 6, 15, 18, 24, and 28 respectively, applicant respectfully submits that the rejections of these claims are likewise improper,

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and request withdrawal of the rejections from dependent claims 2-5, 7-11, 16-17, 19-20, 23, 25-27, and 29-30 as well.

Independent Claims 9, 12 and 24

According to the office action, Alexander discloses all the elements of applicant's independent claim 9. However, applicant respectfully submits that Alexander fails to describe, and the office action does not assert Alexander as teaching the limitation of "sending the custom channel data from the broker to the provider".

As discussed above, Alexander fails throughout to describe a 'custom channel' as claimed by applicant. Therefore, Alexander also fails to describe 'custom channel data' as recited in independent claim 9. Further, Alexander fails to describe sending custom channel data from the broker to the provider. Alexander states that reports of "viewer profile information", described as "simple statistics collected about a particular viewer, Viewer Preferences, and Viewer Characteristic", "could be provided for analysis by advertisers, head end operators, Guide producers, or others", (col. 30, lines 48-49 and col. 33, lines 11-13). Alexander describes this information as being information (data) about the viewer (viewer preferences, viewer characteristics), not "custom channel data", therefore, Alexander does not describe providing applicant's recited "custom channel data". Also, Alexander does not disclose applicant's recited "sending the custom channel data from the broker to the provider", (emphasis provided). Alexander states that the viewer profile information is collected and used by the EPG and Profile Program, but Alexander fails to disclose how the Viewer Profile Information is provided to advertisers, head end operators, Guide producers, or others. Therefore, Alexander does not describe at least applicant's limitation of "sending the custom channel data from the broker to the

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provider” in independent claims 9 and 24, and the limitation of “receiving from a broker custom channel data associated with a customer” in independent claim 12.

Rejections Under 35 U.S.C. § 103

In the July 1, 2005 office action, claims 13-14 and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Alexander et al (6,177,931) (hereinafter ‘Alexander’) as applied to claims 12 and 18 above, and in view of Chen et al, (5,917,830). The office action relies upon Chen to recite a ‘cable system head end 140 that receives encrypted channels and further includes Transcoder 260 for encryption/modulation 260 from one or more service provides [sic] and transmits to subscribers homes (figs. 2, col. 5, lines 19-48).”

However, the references, either combined or individually, fail to teach or make obvious at least “transmitting the at least one custom channel to the customer” as recited in applicant’s independent claim 12, and “a custom channel including at least one television program” as recited in applicant’s independent claim 18, as discussed above in regard to the 102(e) rejections. Alexander fails to describe applicant’s recited ‘custom channel’, and Chen does not supply this description either alone or combined with Alexander. As such, the combination of Alexander and Chen likewise fail to disclose or make obvious applicant’s independent claims 12 and 18.

As claims 13-14 and 22 depend from and include the recitations of independent claims 12 and 18, respectively, applicant respectfully submits that the combined references likewise fail to teach claims 13-14 and 22, and request the 103(a) rejections be withdrawn from claims 13-14 and 22.

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CONCLUSION

In light of the amendments and arguments set forth herein, applicant respectfully submits that the rejections have been properly overcome, and all claims are allowable as originally presented.

Please charge any shortages and credit any overages to Deposit Account No. 02-2666.

Respectfully submitted,

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